

STATE PERSONNEL BOARD CALENDAR



JULY 13, 2005

SACRAMENTO, CALIFORNIA

State of California

Memorandum

DATE: July 1, 2005

TO: ALL INTERESTED PARTIES

FROM: STATE PERSONNEL BOARD - Appeals Division

SUBJECT: Notice and Agenda for the **July 13, 2005**, meeting of the State Personnel Board.

PLEASE TAKE NOTICE that on July 13, 2005, at the offices of the **Secretary of State, located at 1500 11th Street, Auditorium – First Floor, Sacramento, CA 95814**, the State Personnel Board will hold its regularly scheduled meeting. Pursuant to Government Code section 11123, a teleconference location may be conducted for this meeting at 320 W. 4th Street, Los Angeles, California.

The attached Agenda provides a brief description of each item to be considered and lists the date and approximate time for discussion of the item.

Also noted is whether the item will be considered in closed or public session. Closed sessions are closed to members of the public. All discussions held in public sessions are open to those interested in attending. Interested members of the public who wish to address the Board on a public session item may request the opportunity to do so.

Should you wish to obtain a copy of any of the items considered in the public sessions for the July 13, 2005, meeting, please contact staff in the Secretariat's Office, State Personnel Board, 801 Capitol Mall, MS 22, Sacramento, California 95814 or by calling (916) 653-0429 or TDD (916) 654-2360, or the Internet at:

<http://www.spb.ca.gov/calendar.htm>

Should you have any questions regarding this Notice and Agenda, please contact staff in the Secretariat's Office at the address or telephone numbers above.



P. Fong
Secretariat's Office

Attachment



CALIFORNIA STATE PERSONNEL BOARD MEETING¹

801 Capitol Mall
Sacramento, California

Public Session Location –

**Secretary of State
Auditorium, First Floor
1500 11th Street**

Sacramento, California 95814

Teleconference – 320 West 4th Street²
Los Angeles, California, Suite 620

Closed Session Location –

Secretary of State
Multipurpose Room, First Floor
1500 11th Street
Sacramento, California 95814
Teleconference – 320 West 4th Street
Los Angeles, California, Suite 620

FULL BOARD MEETING – JULY 13, 2005

¹ Sign Language Interpreter will be provided for Board Meeting upon request - contact Secretariat at (916) 653-0429, or CALNET 453-0429, TDD (916) 654-2360.

²Pursuant to Government Code section 11123, a teleconference location may be conducted for this meeting at 320 West 4th Street, Los Angeles, California.

FULL BOARD MEETING AGENDA³

JULY 13, 2005

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

(9:00 a.m. – 9:45 a.m.)

- 1. ROLL CALL**
- 2. REPORT OF THE EXECUTIVE OFFICER – Floyd D. Shimomura**
- 3. REPORT OF THE DEPARTMENT OF PERSONNEL ADMINISTRATION (DPA)
– Michael Navarro**
- 4. REPORT ON THE PUBLIC EMPLOYEES RETIREMENT SYSTEM (PERS)
– Ron Alvarado**
- 5. REPORT OF THE CHIEF COUNSEL – Elise Rose**
- 6. NEW BUSINESS**
- 7. REPORT ON LEGISLATION – Sherry Hicks**

The Board may be asked to adopt a position with respect to the bills listed on the legislation memorandum attached hereto.

(9:45 a.m. – 10:15 a.m.)

8. ORAL ARGUMENT

Oral argument in the matter of **PATRICK BARBER, CASE NO. 04-0174A**.
Appeal from dismissal. Youth Correctional Officer. Department of Youth
Authority.

(10:15 a.m. – 10:45 a.m.)

9. ORAL ARGUMENT

Oral argument in the matter of **FRANK GARCIA, CASE NO. 04-0092P**.
Appeal from dismissal. Chief Engineer I. Department of Corrections.

³ The Agenda for the Board can be obtained at the following internet address:
<http://www.spb.ca.gov/calendar.htm>

CLOSED SESSION OF THE STATE PERSONNEL BOARD

(10:45 a.m. – 11:15 a.m.)

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

(11:15 a.m. – 11:45 a.m.)

**10. HEARING – PERSONAL SERVICES CONTRACT # 05-03:
SEIU Local 1000 (CSEA)'s Appeal of the Executive Officer's Decision**

Appeal of SEIU Local 1000 (CSEA) from the Executive Officer's February 16, 2005 Approval of a Contract for Information Technology Services between the California Department of Health Services (DHS) and IDNS, Inc.

CLOSED SESSION OF THE STATE PERSONNEL

(11:45 a.m. – 12:00 p.m.)

LUNCH

(12:00 p.m. – 1:00 p.m.)

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

(1:00 p.m. – 1:30 p.m.)

11. CAL BAY DELTA AUTHORITY - Wendy Halverson Martin & Karen Lynch

The California Bay Delta Authority (CBDA) proposes establishment of a Program Manager class series consisting of three managerial designated classes titled: Program Manager I, CBDA; Program Manager II, CBDA; and Program Manager III, CBDA, each with a twelve month probationary period.

(1:30 p.m. – 2:00 p.m.)

**12. PRE-EMPLOYMENT DRUG TESTING – CLASSIFICATION ITEM
- Daphne Baldwin**

The California Department of Corrections, Department of Developmental Services, Department of Mental Health, and the Department of Veterans Affairs are requesting revision to the minimum qualifications for the Clinical Social Worker (Health Facility) and the Clinical Social Worker (Health/Correctional Facility)(Safety) classifications and designation of the classes as “sensitive” for the purpose of pre-employment drug testing.

CLOSED SESSION OF THE STATE PERSONNEL BOARD

(2:00 p.m. – 2:15 p.m.)

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

(2:15 p.m. – 3:15 p.m.)

**13. INFORMATIONAL BRIEFING BY THE LITTLE HOOVER COMMISSION
- James P. Mayer, Executive Director, Little Hoover Commission**

Informational briefing regarding recommendations contained in the Little Hoover Commission’s Report, *Serving the Public: Managing the State Workforce to Improve Outcomes*. The Commission recommended that the Governor and Legislature make strategic changes in three major areas – how the State recruits and hires managers, how departments manage and motivate workers, and how compensation could be used to attract and reward high performing managers.

CLOSED SESSION OF THE STATE PERSONNEL BOARD

(3:15 p.m. – 3:30 p.m.)

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

(3:30 p.m. – 4:30 p.m.)

- 14. INFORMATIONAL BRIEFING: SCOPE OF BARGAINING (PART II)**
- Various employee representatives, other interested parties and agencies

Informational briefing on scope of bargaining issues scheduled to provide the opportunity for comment by employee representatives, agencies and other interested parties.

(4:30 p.m. – 4:45 p.m.)

- 15. DISCUSSION OF COMING BOARD MEETING SCHEDULE OF
JULY 26, 2005, IN SACRAMENTO, CALIFORNIA**
- 16. ADOPTION OF THE STATE PERSONNEL BOARD SUMMARY MINUTES**

June 7, 2005 Summary Minutes
- 17. EVIDENTIARY CASES - (See Case Listings on Page 12-18)**
- 18. RESOLUTION EXTENDING TIME UNDER GOVERNMENT CODE
SECTION 18671.1 EXTENSION - (See Agenda Page 25-26)**
- 19. NON-EVIDENTIARY CASES - (See Case Listings on Page 19-22)**
- 20. NON-HEARING CALENDAR**

Proposals are made to the State Personnel Board by either the Board staff or Department of Personnel Administration staff.

NONE

- 21. STAFF CALENDAR ITEMS FOR BOARD INFORMATION**

The Department of Personnel Administration on behalf of the Department of Insurance proposes the abolishment of the Worker's Compensation Conference Referee (WCCR) classification. In 1992 the legislation which created the WCCR class was sunset and the functions associated with the WCCR class removed. Currently the WCCR is unused and has no incumbents.

22. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

This section of the Agenda serves to inform interested individuals and departments of proposed and approved CEA position actions.

The first section lists position actions that have been proposed and are currently under consideration.

Any parties having concerns with the merits of a proposed CEA position action should submit their concerns in writing to the Classification and Compensation Division of the Department of Personnel Administration, the Merit Employment and Technical Resources Division of the State Personnel Board, and the department proposing the action.

To assure adequate time to consider objections to a CEA position action, issues should be presented immediately upon receipt of the State Personnel Board Agenda in which the proposed position action is noticed as being under consideration, and generally no later than a week to ten days after its publication.

In cases where a merit issue has been raised regarding a proposed CEA position action and the dispute cannot be resolved, a hearing before the five-member Board may be scheduled. If no merit issues are raised regarding a proposed CEA position action, and it is approved by the State Personnel Board, the action becomes effective without further action by the Board.

The second section of this portion of the Agenda reports those position actions that have been approved. They are effective as of the date they were approved by the Executive Officer of the State Personnel Board.

A. CHIEF, ENTERPRISE POLICY AND STRATEGIC PLANNING OFFICE

The Department of Water Resources proposes to allocate the above position to the CEA category. The Chief, Enterprise Policy and Strategic Planning Office will provide policy development, strategic planning and department wide oversight for strategic planning, change management, business process reengineering, organization structure/program performance analysis and evaluation, project management, and integrating enterprise resource planning software (SAP) into all aspects of the Department's business operations.

CHIEF DEPUTY DIRECTOR

The Department of Motor Vehicles proposes to allocate the above position to the CEA category. The Chief Deputy Director, DMV, is at the first organizational level and assists the Director, DMV, in the direction and oversight of the department, including the department's major, statewide, mission critical programs, such as driver licensing, vehicle and boat registration, driver safety, occupational licensing and regulation, and motor carrier licensing and regulation.

PROGRAM MANAGER, MOTOR VEHICLE GREENHOUSE GAS EMISSION REDUCTION

The above position was allocated to the CEA category for a two-year period effective June 5, 2003 through January 1, 2006. The Air Resources Board is proposing that the position, Program Manager, Motor Vehicle Greenhouse Gas Emission Reduction, be allocated to the CEA category on a permanent basis. The Program Manager, Motor Vehicle Greenhouse Gas Emission Reduction directs the work of a multi-disciplinary team, assembled across ARB divisional boundaries, that develops policies and strategies to fulfill the Department's ongoing responsibilities for control of greenhouse gas emissions from motor vehicles.

CHIEF LEARNING OFFICER, TRAINING AND PROFESSIONAL DEVELOPMENT PROGRAM

The Department of Corrections proposes to reallocate the existing civil service position Chief Deputy Administrator, Correctional Programs, CEA to the Chief Learning Officer, Training and Professional Development in the CEA Band category. The Chief Learning Officer is responsible for determining policy, procedures, and priorities of the Departmental Training and Professional Development Program.

ASSISTANT SECRETARY CLIMATE CHANGE ACTIVITIES

The Air Resources Board proposes to allocate the above position to the CEA category. The Assistant Secretary Climate Change Activities is responsible for the development of policies and strategies for consideration by the Secretary and ultimately the Governor that will ensure that the State's greenhouse gas emission reduction targets are met.

**REGION CHIEF, COASTAL REGION, SANTA ROSA
REGION CHIEF, CASCADE REGION, REDDING
REGION CHIEF, SIERRA REGION, FRESNO
REGION CHIEF, SOUTHERN REGION, RIVERSIDE**

The Department of Forestry proposed to reallocate the following four existing Assistant Region Chief CEA allocations to the above mentioned positions: Assistant Region Chief, Administration, Northern; Assistant Region Chief, Operations, Northern; Assistant Region Chief, Operations,

Southern; and the Assistant Region Chief, Administration, Southern. The Department of Forestry is proposing to return to an organizational structure where the State was divided into four regions (Coast, Cascade, Sierra, and South) each managed by a Region Chief at the CEA level.

ASSISTANT DEPUTY DIRECTOR, FIRE PROTECTION, OPERATIONS

The Department of Forestry proposes to reallocate the existing CEA allocation Assistant Deputy Director, Fire Protection to the above mentioned position. The Assistant Deputy Director, Fire Protection, Operations will be responsible for the overall management of the Fire Protection Operations Program.

ASSISTANT DEPUTY DIRECTOR, PRE-FIRE PLANNING, PREVENTION, AND FLEET ADMINISTRATION

The Department of Forestry proposes to allocate the above position to the CEA category. The Assistant Deputy Director, Pre-Fire Planning, Prevention, and Fleet Administration will be responsible for developing policies in support of the California Fire Plan, Fire Prevention and Fleet Administrative Programs.

ASSISTANT DEPUTY DIRECTOR, COOPERATIVE FIRE, TRAINING, AND SAFETY

The Department of Forestry proposes to allocate the above position to the CEA category. The Assistant Deputy Director, Cooperative Fire, Training, and Safety will be responsible for developing and establishing statewide policies in support of Cooperative Fire Services, Statewide Training and Academy and Safety Programs.

B. CHIEF COUNSEL

The Department of Corporations has requested to withdraw their request to reallocate their existing CEA Assistant Commissioner, Securities Regulation Division to the Chief Counsel Division effective June 2, 2005.

PROGRAM MANAGER, OFFICE OF TECHNOLOGY RESOURCES, ENTERPRISE RESOURCE PLANNING PROGRAM

The Department of General Services has requested to withdraw their request to establish a CEA allocation for the Program Manager, Office of Technology Resources, Enterprise Resource Planning Program effective June 3, 2005.

23. EMPLOYEE APPOINTMENTS, DISCIPLINARY MATTERS, & OTHER APPEALS

Deliberations to consider matter submitted at prior hearing. [Government Code sections 11126(d), 18653.]

NONE

24. WRITTEN STAFF REPORT FOR BOARD INFORMATION

NONE

25. PRESENTATION OF EMERGENCY ITEMS AS NECESSARY

26. BOARD ACTIONS - (See Agenda - Page 23-24)

These items have been taken under submission by the State Personnel Board at a prior meeting and may be before the Board for a vote at this meeting. This list does not include evidentiary cases, as those cases are listed separately by category on this agenda under Evidentiary Cases.

CLOSED SESSION OF THE STATE PERSONNEL BOARD

(4:45 p.m. – onwards)

27. DELIBERATION ON ADVERSE ACTIONS, DISCRIMINATION COMPLAINTS, AND OTHER PROPOSED DECISIONS SUBMITTED BY ADMINISTRATIVE LAW JUDGES

Deliberations on matters submitted at prior hearing; on proposed, rejected, remanded, and submitted decisions; petitions for rehearing; and other matters related to cases heard by administrative law judges of the State Personnel Board or by the Board itself. [Government Code Sections 11126 (d), and 18653 (2).]

28. PENDING LITIGATION

Conference with legal counsel to confer with and receive advice regarding pending litigation when discussion in open session would be prejudicial. [Government Code sections 11126(e)(1) and 18653.]

State Personnel Board v. Department of Personnel Administration,
California Supreme Court Case No. S119498.

State Personnel Board v. California State Employees Association,
California Supreme Court Case No. S122058.

Connerly v. State Personnel Board, California Supreme Court,
Case No. S125502.

International Union of Operating Engineers v. State Personnel Board,
Public Employment Relations Board (PERB) Case No. SA-CE-1295-S.

State Compensation Ins. Fund v. State Personnel Board/CSEA,
Sacramento Superior Court No. 04CS00049.

SEIU Local 1000 (CSEA) v. State Personnel Board,
Sacramento Superior Court No. 05CS00374.

The Copley Press, Inc. v. San Diego Superior Court,
California Supreme Court No. S128603.

Union of American Physicians and Dentists v. Department of Corrections, et al.,
United States District Court, Northern District of California.

29. RECOMMENDATIONS TO THE LEGISLATURE

Deliberations on recommendations to the legislature.
[Government Code section 18653.]

30. RECOMMENDATIONS TO THE GOVERNOR

Deliberations on recommendations to the Governor on scope of bargaining.
[Government Code section 18653.]

A D J O U R N M E N T

17. EVIDENTIARY CASES

The Board Administrative Law Judges conduct evidentiary hearings in appeals that include, but are not limited to, adverse actions, medical terminations, demotions, discrimination, reasonable accommodations, and whistleblower complaints.

A. BOARD CASES SUBMITTED

These items have been taken under submission by the State Personnel Board at a prior meeting. Cases that are before the Board for vote will be provided under separate cover.

(1) **CHAD LOOK, CASE NO. 04-1789**

Appeal from 60 working days suspension

Classification: Correctional Officer

Department: Department of Corrections

Proposed decision rejected January 11, 2005

Transcript prepared

Oral argument heard June 7, 2005, Sacramento

Case ready for decision by FULL Board

(2) **JAMES MCAULEY, CASE NO. 04-1856**

Appeal from dismissal

Classification: Associate Transportation Engineer, Caltrans
(Registered)

Department: Department of Transportation

Proposed decision rejected March 8-9, 2005

Transcript prepared

Oral argument heard June 7, 2005, Sacramento

Case ready for decision by FULL Board

(3) **DARYL STONE, CASE NO. 04-0279A**

Appeal from dismissal

Classification: Police Officer I

Department: Department of Developmental Services

ALJ's Proposed Decision rejected by the Board on
February 8, 2005

Transcript prepared

Oral argument heard May 3, 2005

Case ready for decision by FULL Board

B. CASES PENDING

ORAL ARGUMENTS

These cases are on calendar to be argued at this meeting or to be considered by the Board in closed session based on written arguments submitted by the parties.

- (1) PATRICK BARBER, CASE NO. 04-1789**
Appeal from 60 working days' suspension
Classification: Correctional Officer
Department: Department of Corrections
- (2) FRANK GARCIA, CASE NO. 04-0092PA**
Appeal from dismissal
Classification: Chief Engineer I
Department: Department of Corrections

C. CHIEF COUNSEL RESOLUTIONS

NONE

COURT REMANDS

This case has been remanded to the Board by the court for further Board action.

NONE

STIPULATIONS

These stipulations have been submitted to the Board for Board approval, pursuant to Government Code, section 18681.

NONE

D. ADMINISTRATIVE LAW JUDGE'S (ALJ) PROPOSED DECISIONS

PROPOSED DECISIONS

These are ALJ proposed decisions submitted to the Board for the first time.

- (1) ELVIA ARGUELLES, CASE NO. 03-1079B**
Appeal for determination of salary, benefits and interest
Classification: Licensing Program Analyst
Department: Department of Social Services
- (2) SUSAN BRIGGS-REIMAN, CASE NO. 04-0972 & 04-2516**
Appeal from two days suspension and demotion from the position of Social Worker III to the position of Social Worker II
Classification: Social Worker III
Department: Human Services Agency, County of Merced
- (3) MARCIE CHURCO, CASE NO. 04-2347**
Appeal from rejection during probationary period
Classification: Office Assistant (Typing)
Department: Unemployment Insurance Appeals Board
- (4) JUNIUS ELI, JR., CASE NO. 05-0791**
Appeal from official reprimand
Classification: Satellite Wagering Facility Lead Janitor
Department: 22nd District Agricultural Association
- (5) ROBERT FINE, CASE NO. 04-2958**
Appeal from five percent reduction in salary for six pay periods
Classification: Parole Agent I
Department: Department of Corrections
- (6) GARY GARFINKLE, CASE NO. 98-3128RB**
Appeal for determination of back salary, benefits and interest
Classification: Deputy Attorney General IV
Department: Department of Justice
- (7) ALEJANDRO GILL, CASE NO. 05-0054**
Appeal from dismissal
Classification: Correctional Officer
Department: Department of Corrections

- (8) JON HENDERSON, CASE NO. 04-3037**
Appeal from dismissal
Classification: Psychiatric Technician
Department: Department of Developmental Services
- (9) RODNEY JACKSON, CASE NO. 04-2260**
Appeal from dismissal
Classification: Correctional Officer
Department: Department of Corrections
- (10) DAVID MADRIGAL, CASE NO. 04-2363**
Appeal from dismissal
Classification: Correctional Officer
Department: Department of Correction
- (11) GUNASUNDRAN PILLY, CASE NO. 04-1025**
Appeal from dismissal
Classification: Business Taxes Specialist I
Department: Board of Equalization
- (12) MARK SAMORA, CASE NO. 04-3091**
Appeal from dismissal
Classification: Information Technology Consultant
Department: California State University, Los Angeles
- (13) ABAYOMI SONUYI, CASE NO. 05-0542**
Appeal from official reprimand
Classification: Hazardous Material Specialist
Department: Department of Corrections
- (14) LISA STAPP, CASE NO. 04-2951**
Appeal from rejection during probationary period
Classification: Fair Hearing Officer
Department: Department of Social Services, County of Shasta
- (15) LINDA STONESTREET, CASE NO. 03-3547E**
Appeal for determination of back salary, benefits and interest
Classification: Park Maintenance Worker I
Department: Department of Parks and Recreation

- (16) **DELWIN BROWN, CASE NO. 04-1665**
MARCEL BERRY, CASE NO. 04-1667
STEVE CHIU, CASE NO. 04-1773
LINDA BERSHELL-BRIDGES, CASE NO. 04-1777
ROBERT DUTRA, CASE NO. 04-1800
DANIEL TORRES, CASE NO. 04-1714
Appeals from dismissal
Classification: Youth Correctional Officer, Youth Correctional
Counsel and Senior Youth Correctional Counselor
Department: Department of Corrections

Proposed Decisions Taken Under Submission At Prior Meeting

These are ALJ proposed decisions taken under submission at a prior Board meeting, for lack of majority vote or other reason.

NONE

PROPOSED DECISIONS AFTER BOARD REMAND

NONE

PROPOSED DECISIONS AFTER SPB ARBITRATION

NONE

E. PETITIONS FOR REHEARING

ALJ PROPOSED DECISIONS ADOPTED BY THE BOARD

The Board will vote to grant or deny a petition for rehearing filed by one or both parties, regarding a case already decided by the Board.

- (1) **FRANK BRASWELL, CASE NO. 04-2459P**
Appeal from five percent reduction in salary for 12 months
Classification: Correctional Officer
Department: Department of Corrections
- (2) **DONALD CATHEY, CASE NO. 04-2153P**
Appeal from one-step reduction in salary for six months
Classification: Correctional Officer
Department: Department of Corrections

(3) ELAINE SIMMONS, CASE NO. 02-4258EP

Appeal from denial of discrimination and retaliation complaint

Classification: Associate Management Analyst

Department: California Public Utilities Commission

WHISTLEBLOWER NOTICE OF FINDINGS

The Board will vote to grant or deny a petition for rehearing filed by one or both parties, regarding a Notice of Findings issued by the Executive Officer under Government Code, section 19682 et seq. and Title 2, California Code of Regulations, section 56 et seq.

NONE

F. PENDING BOARD REVIEW

These cases are pending preparation of transcripts, briefs, or the setting of oral argument before the Board.

(1) PATRICK BARBER, CASE NO. 04-0174PA

Appeal from dismissal

Classification: Youth Correctional Counselor

Department: Department of the Youth Authority

Proposed decision adopted November 3, 2004

Modifying dismissal to 45-calendar day suspension

Petition for Rehearing granted February 8-9, 2005

Transcript prepared

Pending oral argument June 7, 2005, Sacramento

Oral argument continued

Pending oral argument July 13, 2005, Sacramento

(2) JON CHASE, CASE NO. 04-0392A

Appeal from 30 working days suspension

Classification: Associate Management Auditor

Department: Employment Development Department

Proposed decision rejected April 19, 2005

Transcript prepared

Pending oral argument July 13, 2005, Sacramento

Oral argument continued

Pending oral argument August 9-10, 2005, Sacramento

(3) FRANK GARCIA, CASE NO. 04-0092PA

Appeal from dismissal

Classification: Chief Engineer I

Department: Department of Corrections

Petition for rehearing granted May 3, 2005

Transcript prepared

Pending oral argument July 13, 2005, Sacramento

**(4) INTERNATIONAL UNION OF OPERATING ENGINEERS,
UNIT 12, LOCALS 3, 12, 39, & 501, CASE NO. 04-0813A
[PSC File No. 04-002 (b)]**

Review of personal services contract for maintenance and grounds
keeping

Department: California Science Center

Proposed decision rejected June 21, 2005

Pending transcript

(5) JOSEPH MARTINEZ, CASE NO. 04-2690A

Appeal from dismissal

Classification: Hospital Police Officer

Department: Department of Mental Health

Proposed decision rejected May 17, 2005

Transcript prepared

Pending oral argument August 31-31, 2005, Los Angeles

(6) KIM RITTENHOUSE, CASE Nos. 03-3541A & 03-3542E

Appeal from denial of reasonable accommodation

Classification: Office Technician (General)

Department: Department of Fish and Game

Proposed decision rejected May 18, 2004

Pending transcript

(7) ANDREW RUIZ, CASE NO. 04-2391A

Appeal from dismissal

Classification: Correctional Lieutenant

Department: Department of Corrections

Proposed decision rejected June 7, 2005

Pending transcript

19. NON-EVIDENTIARY CASES

A. WITHHOLD APPEALS

Cases heard by a Staff Hearing Officer, a managerial staff member of the State Personnel Board or investigated by Appeals Division staff. The Board will be presented recommendations by a Staff Hearing Officer or Appeals Division staff for final decision on each appeal.

WITHHOLD FROM CERTIFICATION **CASES HEARD BY A STAFF HEARING OFFICER**

NONE

WITHHOLD FROM CERTIFICATION **CASES NOT HEARD BY A STAFF HEARING OFFICER**

- (1) ENRIQUE AGUILERA, CASE NO. 05-0411**
Classification: Correctional Officer
Department: Corrections
Issue: Suitability and illegal drug activity.
- (2) ELIGIO MARTINEZ, NO. 04-2232**
Classification: Correctional Officer
Department: Corrections
Issue: Suitability, omitted pertinent information, furnished inaccurate information, negative employment record and failure to meet legal obligations.

B. MEDICAL AND PSYCHOLOGICAL SCREENING APPEALS

Cases heard by a Staff Hearing Panel comprised of a managerial staff member of the State Personnel Board and a medical professional. The Board will be presented recommendations by a Hearing Panel on each appeal.

- (1) THOMAS MAUNE, CASE NO. 04-2178**
Classification: Special Investigator I
Department: California Department of Mental Health
Issue: Does sufficient evidence exist to support the psychological disqualification of the appellant?

(2) BARBARA MONTES, CASE NO. 04-2179

Classification: Hospital Peace Officer

Department: California Department of Mental Health

Issue: Is the appellant free from any mental or emotional or condition that would adversely affect the exercise of the powers of a peace officer?

**C. EXAMINATION APPEALS
MINIMUM QUALIFICATIONS
MERIT ISSUE COMPLAINTS**

Cases heard by a Staff Hearing Officer, a managerial staff member of the State Personnel Board or investigated by Appeals Division staff. The Board will be presented recommendations by a Staff Hearing Officer or Appeals Division staff for final decision on each appeal.

EXAMINATION APPEALS

NONE

MINIMUM QUALIFICATIONS

NONE

MERIT ISSUE COMPLAINTS

NONE

**D. RULE 211 APPEALS
RULE 212 OUT OF CLASS APPEALS
VOIDED APPOINTMENT APPEALS**

Cases heard by a Staff Hearing Officer, or a managerial staff member of the State Personnel Board. The Board will be presented recommendations by a Staff Hearing Officer for final decision on each appeal.

NONE

E. REQUEST TO FILE CHARGES CASES

Investigated by Appeals Division staff. The Board will be presented recommendations by Appeals Division staff for final decision on each request.

- (1) JIM BOYLE, CASE NO. 04-0426**
Classification: Academic Teacher
Department: California Youth Authority
Issue: The charging party requests charges be filed against the charged party for violations of various subsections of Government Code section 19572.
- (2) MARILYN COLE, CASE NO. 04-2017**
Classification: N/A – Member of the Public
Department: Department of Corrections
Issue: The charging party requests to file charges against various employees of the CDC.
- (3) ROBERT LEFORT, CASE NO. 04-1608**
Classification: Civilly committed offender at ASH
Department: Mental Health
Issue: The charging party requests charges be filed against the charged party for violations of various subsections of Government Code section 19572.
- (4) KATHY SWINFORD, CASE NO. 04-1611**
Classification: Correctional Officer
Department: Corrections
Issue: The charging party requests charges be filed against the charged party for violation of Government Code section 19572 (w).
- (5) JOHN WAGNER, CASE NO. 04-1891**
Classification: N/A – Member of the Public
Department: Health Services
Issue: The charging party requests charges be filed against the charged party for violations of various subsections of Government Code section 19572.
- (6) TISHA WONG, CASE NO. 04-0872**
Classification: Former state employee
Department: California Department of Transportation
Issue: The charging party requests charges be filed against the charged party for violations of various subsections of Government Code section 19572.

PETITIONS FOR REHEARING CASES

NONE

F. PSYCHOLOGICAL SCREENING CASES

Cases reviewed by Appeals Division staff, but no hearing was held. It is anticipated that the Board will act on these proposals without a hearing.

NONE

SUBMITTED

1. TEACHER STATE HOSPITAL (SEVERELY), ETC.

Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002.)

2. VOCATIONAL INSTRUCTOR (SAFETY)(VARIOUS SPECIALTIES)

Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002.)

3. TELEVISION SPECIALIST (SAFETY)

The Department of Corrections proposes to establish the new classification Television Specialist (Safety) by using the existing Television Specialist class specification and adding "Safety" as a parenthetical to recognize the public aspect of their job, additional language will be added to the Typical Tasks section of the class specification and a Special Physical Characteristics section will be added. (Presented to Board March 4, 2003.)

4. HEARING – Personal Services Contract #04-03

Appeal of the California State Employees Association from the Executive Officer's April 15, 2004, Approval of Master Contracts between the California Department of Corrections and Staffing Solutions, CliniStaff, Inc., Staff USA, Inc., CareerStaff Unlimited, MSI International, Inc., Access Medical Staffing & Service, Drug Consultants, Infinity Quality Services Corporation, Licensed Medical Staffing, Inc., Morgan Management Services, Inc., Asereth Medical Services, and PrideStaff dba Rx Relief. (Hearing held August 12, 2004.)

5. HEARING

Proposed new and revised State Personnel Board Regulations effecting equal opportunity, discrimination complaints and reasonable accommodation policies and procedures. (Hearing held July 7, 2004.)

6. DARYL STONE, CASE NO. 04-0279A

Appeal from dismissal. Police Officer I. Department of Developmental Services. (Oral argument held May 3, 2005.)

7. HEARING – Personal Services Contract #05-02

Appeal of the International Union of Operating Engineers from the Executive Officer's January 5, 2005 Decision Denying Review of Contracts for Drilling Services between the California Department of Transportation and URS Corporation and Geocon Consultants, Inc. (Hearing held June 7, 2005)

8. CHAD LOOK, CASE NO. 04-1789

Appeal from 60 working day suspension. Correctional Officer. Department of Corrections. (Oral argument held June 7, 2005.)

9. JAMES MCAULEY , CASE NO. 04-1856

Appeal from dismissal. Associate Transportation Engineer. Department of Transportation. (Oral argument held June 7, 2005.)

NOTICE OF GOVERNMENT CODE SECTION 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional 45 days, the Board hereby publishes its substantial reasons for the need for the 45-day extension for some of the cases now pending before it for decision.

An additional 45 days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than six months as of the date of the Board meeting.

GOVERNMENT CODE SECTION 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code section 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

* * * * *



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(Cal. 7/13/05)

TO: Members
State Personnel Board

FROM: State Personnel Board - Legislative Office

SUBJECT: LEGISLATION

The status of major legislation being followed for impact on Board programs and the general administration of the State Civil Service Merit System is detailed in the attached report.

Any legislative action that takes place after the printing of this report, which requires discussion with the Board, will be covered during the Board meeting.

Please contact me directly should you have any questions or comments regarding this report. I can be reached at (916) 653-0453.

A handwritten signature in cursive script that reads 'Sherry Hicks'.

Sherry Hicks
Director of Legislation

Attachment

**STATE PERSONNEL BOARD
LEGISLATIVE TRACKING
REPORT
2005-06 SESSION**

**Status as of
June 24, 2005**



ASSEMBLY/SENATE BILLS
(Tracking)

BILL/ AUTHOR	BOARD POSITION	SUBJECT	STATUS OF BILL
AB 38 (Tran)	OPOSE	AB 38 proposes suspending the salaries of specific state board and commission members for the fiscal years 2005 through 2009. The State Personnel Board is one of those boards that would not receive salaries for those fiscal years.	Assembly Business and Professions Committee. Died in Committee.
AB 47 (Cohn)	NEUTRAL	This bill would prohibit, except under specified circumstances, the Department of General Services from authorizing the Department of Corrections to enter into contracts for medical care services without seeking competitive bids for those contracts	Senate Committee on Governmental Modernization Efficiency and Accountability
AB 94 (Haynes)	NEUTRAL	Among other things, this bill would require various state agencies to prepare and provide a report to the Senate Committee on Rules, the Assembly Committee on Rules, and to each member of the Senate Committee on Budget and Fiscal Review and the Assembly Committee on Budget on the financial activities of the agency, board, commission, department, or office for the 2000-01, 2001-02, 2002-03, 2003-04 and 2004-05 fiscal years no later than January 15, 2006, and for each subsequent fiscal year by January 15 of the following year.	2-year Bill.

AB 124 (Dymally)	SUPPORT	This bill would repeal requirements to annually establish employment goals and timetables based on race or gender that were invalidated by the California Court of Appeal in <i>Connerly v. State Personnel Board</i> , and re-title Chapter 12 of Part 2, Division 5, Title 2 of the Government Code from “Affirmative Action Program” to “State Equal Employment Opportunity Program”. In addition, it would strengthen equal employment opportunity requirements.	Senate Judiciary Committee. Committee amendments taken.
AB 194 (Dymally)		The Ralph M. Brown Act requires, with specified exceptions, that all meetings of a legislative body of a local agency be open and public and all persons be permitted to attend. This bill would remove the requirement that the legislative body be allowed to cure or correct an alleged violation prior to commencement of a legal action and would remove provisions that preclude specified actions from being determined to be null and void.	Assembly Committee on Local Government (2-Year Bill).
AB 195 (Dymally)	NO POSITION	This bill would expand the remedies available to individuals who file discrimination complaints with the State Personnel Board by authorizing the State Personnel Board to award reasonable attorney’s fees and costs, including expert witness fees.	Senate Judiciary Committee
AB 219 (Nakanishi)		This bill would require all state departments, commissions, or other agencies to submit an electronic copy of each publication issued to the State Library. It would require the State Library to create and maintain a Web site that includes a monthly or quarterly list of each state publication issued during the immediately preceding month or quarter and that provides access to an electronic copy of each publication. It would provide that if a copy of a state publication is available on the State Library Web site, it shall be deemed distributed in compliance with specified redistribution requirements.	Senate Committee on Governmental Modernization Efficiency and Accountability

AB 271 (BLAKESLEE)	OPPOSE	This bill would require that any person appointed to a scientist class in state service possess a four-year degree in a scientific discipline from an accredited university.	Assembly Inactive File. 2-year bill.
AB 277 (Mountjoy)	SUPPORT	This bill would authorize the Board of Administration of the Public Employees' Retirement System to hold closed sessions when considering matters relating to the development of rates and competitive strategy for long-term care insurance plans.	Senate Committee on Governmental Modernization Efficiency and Accountability.
AB 297 (Yee)	SUPPORT	This bill would specify that a current patient of a facility operated by the state Department of Mental Health (DMH) cannot file charges against a state employee, but rather must use the grievance processes of the DMH.	Senate Appropriations Committee. (Possibly on Consent Calendar)
AB 529 (Goldberg)	NEUTRAL	This bill would amend existing law to permit CSU employees to request hearings by the State Personnel Board (SPB) when CSU trustees: (1) fail to comply with their obligation to apply for disability retirement on behalf of an employee as required under existing law and (2) deny a request for reasonable accommodation.	Senate Judiciary Committee
AB 708 (Karnette)		This bill would require the California State University to employ an independent investigator on all complaints. This bill contains other existing laws.	Senate Judiciary Committee.

AB 775 (Yee)	SUPPORT	This bill would prohibit any state or local governmental agency, or any public or private agency, organization, entity, or program that receives state funding, from using any child, or permitting any child to be used, as an interpreter, as defined, in any hospital, clinic, or physician office in the context of diagnosis and treatment, except as specified. The bill would require each such agency, organization, entity, or program that receives state funding to have in place, and available for inspection, an established procedure for providing competent interpretation services that does not involve the use of children, as defined, in this manner. This bill contains other related provisions and other existing laws.	Senate Judiciary Committee
AB 836 (Huff)	NEUTRAL	Existing law requires every state agency and court for which an appropriation is made to submit to the Department of Finance for approval, a complete and detailed budget setting forth all proposed expenditures and estimated revenues for the ensuring fiscal year. This bill would require that these budgets utilize a zero-based budget method, as defined.	Assembly Budget Committee 2-year Bill.
AB 884 (Baca)	NEUTRAL	This bill would prohibit a state agency, including the California State University, from employing a primary care physician as an independent contractor when there is an unfilled, full-time primary care physician position available within the state agency, unless the state agency is unable to do so after a good faith effort.	Senate PERS Committee

AB 1066 (Horton, Jerome)	NEUTRAL	This bill would amend existing law to provide that a state agency: (1) may not pay a contractor under a cost-savings contract until the State Personnel Board (SPB) had first approved that contract and all administrative appeals have been exhausted or waived; (2) may not seek to enter into a cost-savings contract with a contractor if SPB disapproved a prior contract with that same contractor for the same services within the preceding 12 months; and (3) must give 10 days prior notice to Bargaining Unit 12 of any contract the agency intends to enter into that may affect that bargaining unit.	Senate Committee on Governmental Modernization Efficiency and Accountability.
SB 165 (Speier)	NEUTRAL	This bill would create the Office of the Special Counsel (OSC) as a separate branch of the State Personnel Board (Board), to protect state employees and applicants for state employment who have been retaliated against as a result of their having made protected disclosures under the Whistleblower Protection Act (Government Code section 8547 <i>et seq.</i>).	Senate Appropriations Committee. (Suspense file. 2-year bill.)
SB 606 (Kehoe)	OPPOSE	This bill would authorize that the State Personnel Board may create a classification for full-time lifeguards that does not require completion of the basic training course established by the Commission on Peace Officers Standards and Training.	Senate Appropriations Committee (Suspense File. 2-yr bill)

SB 737 (Romero)		Among other things, upon request of the Governor, the State Personnel Board (SPB) could develop and implement cost-effective recruitment and merit-based selection processes to establish lists of qualified applicants for consideration by the Governor in filling any of the 36 identified positions	Chaptered. Chapter #10, Statutes of 2005.
SB 1095 (Chesbro)	NEUTRAL	<p>This bill would amend existing law by allowing the California Conservation Corps (CCC) exceptions to the current requirements relating to 1) procurement or management of motor vehicle fleets; 2) hire, lease, lease-purchase of property or facilities; 3) limited-term appointments; and 4) hiring-above-minimum salary adjustments.</p> <p>This analysis is limited to those provisions that directly impact the State Personnel Board (SPB). Specifically, the bill would allow CCC to extend limited-term (LT) appointments, beyond the current 2 years, to a maximum of 4 years, when authorized by SPB.</p>	Assembly Appropriations Committee



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MEMORANDUM

Date: June 17, 2005

To: Members of the State Personnel Board

From: Karen J. Brandt, Senior Staff Counsel
State Personnel Board

Reviewed: Elise S. Rose, Chief Counsel
State Personnel Board

Subject: PSC No. 05-03: Appeal of SEIU Local 1000 (CSEA) from the Executive Officer's February 16, 2005 Approval of a Contract for Information Technology Services between the California Department of Health Services and IDNS, Inc.

REASON FOR HEARING

SEIU Local 1000 (CSEA) has appealed to the State Personnel Board (SPB or Board) from the Executive Officer's February 16, 2005 decision, which approved a contract (Contract) for information technology services between the California Department of Health Services (DHS) and IDNS, Inc. (IDNS). (A copy of the Executive Officer's decision is attached hereto as Attachment 1.)

BACKGROUND

Pursuant to the Contract, IDNS provides application maintenance and production support for certain computer systems operated by DHS's Center for Health Statistics (CHS). Within CHS is the Office of Vital Records (OVR), which is responsible for the registration and permanent preservation of all vital records, and the dissemination of vital event information for statistical, research and individual purposes. Each year, OVR records over one million birth, death, fetal death, marriage, and dissolution documents. This vital information was originally maintained on an IBM mainframe computer. IDNS assisted CHS in migrating the information from the obsolete IBM mainframe to Microsoft NT applications. IDNS has provided all the database management services needed by CHS since it migrated to the NT platform. In addition, IDNS has performed the high-level systems analyses, design, programming, and network support. IDNS also provides CHS with application programming services.

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PROCEDURAL HISTORY

By letter dated September 26, 2003, CSEA asked SPB to review the Contract for compliance with Government Code section 19130.

On October 27, 2003, DHS responded to CSEA's review request.

On December 19, 2003, CSEA submitted a reply to DHS's response. In its reply, CSEA asserted that civil service employees at the Teale Data Center (Teale) perform the types of information technology services described in the Contract and that DHS should have obtained those services from Teale, instead of IDNS.

By memorandum dated March 30, 2004, SPB staff asked the Director of Teale to respond to the following questions:

1. When the Contract was entered into in October 2003, could Teale have provided to DHS the information technology services described in the Statement of Work set forth in the Contract?
2. If Teale could not have provided all the services described in the Contract's Statement of Work, which of those services could Teale have provided and which of those services could Teale not have provided? For any of the services that Teale could not have provided, was Teale's inability to provide those services due to the lack of expertise, the lack of adequate civil service staff, or any other reason?
3. Is there any other additional information that Teale could provide to us that would assist us in reviewing whether the Contract could have been adequately and competently performed by state civil service employees at Teale?

Teale responded to these questions on November 8, 2004. In its response, Teale stated that it does not typically support client hardware, operating systems, or applications that are physically located at a client's facility. Instead, application support remains the clients' responsibility.

On December 15, 2004, both CSEA and DHS submitted replies to Teale's response.

On February 16, 2005, the Executive Officer issued his decision approving the Contract. (Attachment 1)

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APPEAL BRIEFS

On March 16, 2005, CSEA appealed to the Board from the Executive Officer's decision.

CSEA filed its opening brief dated May 6, 2005. (Attachment 2)

DHS filed its response dated May 27, 2005. (Attachment 3)

CSEA filed its reply dated June 3, 2005. (Attachment 4)

ISSUE

This matter presents the following issue for the Board's review:

Is the Contract authorized under Government Code section 19130, subdivision (b)(3)?

SUMMARY OF POSITIONS

The parties' full arguments on this issue are contained in the Attachments and the Board's file. Set forth below is a summary of their arguments.

CSEA's Position

CSEA asserts that decision of the Executive Officer should be reversed for the following reasons:

First, the Executive Officer's decision misinterprets that applicable standard of review of contracts under the exception found in Government Code section 19130(b)(3). The Executive Officer incorrectly placed the burden on CSEA to show that state staff is "actually available" to perform the work in question. This determination contradicts numerous Board decisions. Under Government Code section 19130(b)(3), a state agency must provide sufficient information to show that the contracted services are not available through the civil service classifications. In this case, the evidence conclusively shows that the vast majority – if not all - the services being performed by IDNS are services that civil service employees regularly and satisfactorily perform. DHS has the burden of proving that no existing state classification performs the work in question. DHS has failed to meet this burden.

Second, SPB staff erred in both their inquiry to and assessment of information provided by Teale. SPB's staff's inquiry was incorrectly premised on the "availability of staff." Instead, the critical question is whether classifications exist in the civil service for the

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performance of the contracted services. As a result, Teale's responses are erroneous, unreliable and should not form the basis of the final decision in this matter.

Third, DHS improperly bundled a variety of services under the Contract to avoid using civil service classifications. The contracted work is typically performed by civil service employees in a number of classifications ranging from the Information Systems Technician level through each of the Associate and Staff Analyst levels, Programmer level and all the way to the Senior Analyst level. Instead of attempting to retain employees in existing civil service classifications to perform the contracted work, DHS single-mindedly sought to outsource it.

Finally, the Executive Officer failed to require DHS to show that it had made sufficient efforts to determine if the contracted work could be performed by civil service employees.

DHS's Position

DHS asserts that the decision of the Executive Officer should be sustained for the following reasons:

State civil service employees do not have the skills and experience to perform the high level application work that is the primary and overwhelming focus of the Contract. Maintaining the application software of the DHS computer system requires skills and experience not available in the state civil service. The DHS vital records system is running under proprietary application database software. When DHS switched from the inadequate and obsolete IBM mainframe database system, it chose the type of image storage and retrieval database system that is at the heart of the DHS vital records operation. It is the database application software that requires highly specialized skill and experience. State staff do not have the specific experience and qualifications necessary to perform the high level work on the database software that is the focus of the Contract.

It was CSEA that initially argued that Teale staff was capable of providing the services required by DHS. CSEA is now trying to discredit its previous reliance upon Teale. CSEA's change in position is understandable, because Teale has made clear that its employees do not provide the database application software support that is the focus of the Contract.

CSEA cannot raise for the first time on appeal "bundling" assertions that were not argued before the Executive Officer. The high level work for which state employees do not have the necessary skill and experience comprises 96.6% of the value of the Contract.

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Executive Officer's Decision

In his February 16, 2005 decision, the Executive Officer determined that DHS had submitted sufficient information to show that the Contract was justified under Government Code section 19130, subdivision (b)(3) as follows:

"Although CSEA contends that state civil service employees are capable of performing the contracted services, the only specific source of those services it has identified is Teale. The response from Teale, however, indicates that the services are not available through Teale. As the Board stated in *Department of Pesticide Regulation*,¹ in order for a contract to be justified under Government Code section 19130(b)(3), "it must be shown that the services contracted are not available through the civil service system; i.e., there are no existing civil service job classifications through which a state agency could either appoint, or retain through other state agencies that offer services to state departments, employees with the knowledge, skills, expertise, experience or ability needed to perform the required work." While CSEA asserts that, theoretically, employees in certain state civil service classifications could be used to perform the work, it has not demonstrated that the services are actually available through the civil service system. Instead, the response of Teale to SPB staff's inquiry indicates that the services are not available through Teale. Nor are they available through DHS's own employees. Therefore, I conclude that the contract is justified under Government Code section 19130, subdivision (b)(3)."

¹ (2002) PSC No. 01-09, at p.

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ATTACHMENT INDEX

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ATTACHMENTS FOR
THE HEARING ITEMS
ARE AVAILABLE UPON
REQUEST BY
CONTACTING THE
SECRETARIAT OFFICE
AT: (916) 653-0429 OR
TDD (916) 654-2360

MEMORANDUM

TO: STATE PERSONNEL BOARD

FROM: KAREN COFFEE, Division Chief
JENNIFER ROCHE, Analyst
Merit Employment and Technical Resources Division

REVIEWED BY: KAREN COFFEE, Division Chief
Merit Employment and Technical Resources Division

SUBJECT: THE CALIFORNIA BAY DELTA AUTHORITY PROPOSES
ESTABLISHMENT OF A PROGRAM MANAGER CLASS
SERIES

REASON FOR HEARING

The Department of Personnel Administration and the California Bay Delta Authority (CBDA) proposes establishment of a new Program Manager class series consisting of three managerial designated classes entitled: Program Manager I, CBDA; Program Manager II, CBDA; and Program Manager III, CBDA, each with a twelve-month probationary period. This hearing is to allow the Board to hear comments from interested parties.

BACKGROUND

Nearly two-dozen state and federal agencies have some role in management and regulatory responsibilities in the San Francisco Bay and Sacramento-San Joaquin Delta Estuary and participate in the CALFED Bay-Delta Program for the purposes of improving ecosystem quality, water supply reliability, water quality, and the integrity of the levees and channels in the Bay-Delta.

Senate Bill 1653 from the 2001-2002 Session recognized the importance of the Delta, and the need for an authority to oversee the CALFED Bay-Delta Program (CALFED Program) and enacted the California Bay-Delta Authority Act. Effective January 1, 2003 the California Bay Delta Authority (CBDA) became a State governmental entity as outlined under Senate Bill 1653 to act in an oversight capacity in order to ensure the efficiency, transparency, accountability in decision making, and coordinate existing and new government programs to meet common goals, avoid conflicts, and eliminate redundancy and waste. In light of the CBDA's unique oversight and coordination role SB 1563 contained language indicating that CBDA in cooperation with the State Personnel Board (SPB) and

the Department of Personnel Administration (DPA) should pursue the establishment of a new management level classification.¹

Currently a mix of state, federal, local government agencies, and contract employees are establishing and implementing the oversight mechanisms necessary to implement and assess the program elements outlined in the Record of Decision (ROD).² DPA and the CBDA worked with Cooperative Personnel Services (CPS) to conduct a study to assess the body of work conducted by the mix of state, federal, local governmental agencies, and contract employees who have been working at the CBDA since its establishment in 2003, in order to determine if the creation of a new management classification for the CBDA was warranted, or if existing class specifications could be utilized to meet departmental program mission and goals.

DPA and the CBDA have determined that a new management level classification is warranted based on the CBDA's level of authority, breadth of oversight, impact of assigned projects, and coordination of multi-disciplinary and multi-governmental projects are broader and more far-reaching than could be accomplished within existing classifications. The proposed Minimum Qualifications in the Program Manager series will allow for a broader candidate pool and provide CBDA with the ability to attract candidates from a wide variety of disciplines. CBDA has both Federal and local government employees who were considered in the development of the outside patterns in the process class series.

DPA submitted a Non-Hearing Item to SPB proposing the establishment of the new class series entitled Program Manager, California Bay-Delta Authority to be scheduled on the June 21, 2005 Board Calendar. DPA sent a courtesy copy of the proposal to the California Association of Professional Scientists (CAPS) on May 17, 2005. On June 8, 2005 SPB received a letter from the CAPS objecting to the proposal based on CAPS assessment that the existing Environmental Scientist series already addresses the level and complexity required for these programs. CAPS requested that the proposal to establish a new Program Manager class series for CBDA be removed from the June 21, 2005 Board Calendar as a Non-Hearing Item and rescheduled at a later date as a Hearing Item, so that public testimony could be heard regarding the proposal.

RECOMMENDATION

That the five-member Board adopt the following resolutions in the attached DPA memorandum establishing the California Bay Delta Authority Program Manager class series.

¹ Section 79456 of SB 1653: Notwithstanding Section 19818.10 of the Government Code, and in cooperation with the State Personnel Board, and the Department of Personnel Administration, the authority shall establish personnel classifications, including a new management level classification, specific to the authority's unique role in oversight and coordination.

² Prior to the creation of the California Bay Delta Authority a broad consortium of State, Federal, local and private entities worked together on individual projects related to ecosystem health and water supply reliability problems in the California Bay-Delta region. This multi-disciplinary group formulated the controlling document entitled the Record of Decision (ROD), which presents a 30-year restoration and reclamation plan for the Bay-Delta region and its attendant watershed areas.

(Cal; 07/13/05)

TO: STATE PERSONNEL BOARD

FROM: Karen Lynch
Department of Personnel Administration

REVIEWED BY: Josie Fernandez
Department of Personnel Administration

SUBJECT: Proposed establishment of a new class series entitled Program Manager,
California Bay-Delta Authority

SUMMARY OF ISSUES:

The California Bay-Delta Authority (CBDA) proposes establishment of a Program Manager class series used to perform a broad range of staff and management oversight work within the CBDA. The new Program Manager, California Bay Delta Authority class series, will consist of three managerial designated classes entitled Program Manager I, CBDA, Program Manager II, CBDA, and Program Manager III, CBDA; each with a 12-month probationary period. Current incumbents working within the department will be moved by split-off into the appropriate level of the new class series. Some State civil service, Federal and contract employees presently working within the CBDA will be required to participate in examinations conducted on an open basis.

A significant portion of the staff and management oversight work of the CBDA has been performed by Federal employees on loan to the CBDA. Some of these temporary assignments are ending in the near future and the New Programs Consultant selection process is required to make temporary appointments to the New Program Consultant class until the new class and eligible list have been approved by the State Personnel Board.

CONSULTED WITH:

Wendy Halverson Martin, CBDA
Rick Breitenbach, CBDA
Pauline Nevins, CBDA
Dave Caffrey, Cooperative Personnel Services
Marie Powell, Cooperative Personnel Services

The Department of Personnel Administration has sent a courtesy copy of this managerial series new class series proposal to the California Association of Professional Scientists.

CLASSIFICATION CONSIDERATIONS:

See Part B. CLASSIFICATION CONSIDERATIONS

RECOMMENDATIONS:

1. That the following classifications be established; the proposed Program Manager, California Bay-Delta Authority series specification including specifications for the classes as shown in the current calendar be adopted; the probationary period be as specified below; and the results of the examination process described in the classification proposal be used to establish an eligible list for the following proposed new classes:

<u>Class</u>	<u>Probationary Period</u>
Program Manager I, California Bay-Delta Authority	12 Months
Program Manager II, California Bay-Delta Authority	12 Months
Program Manager III, California Bay-Delta Authority	12 Months

2. That the following resolution be adopted:

WHEREAS the State Personnel Board on July 13, 2005 established the class indicated below in Column II; and the duties and responsibilities of this class was substantially included in the existing class indicated below in

WHEREAS the knowledge and abilities required for the class indicated in Column II were substantially tested for in the examinations for the corresponding class indicated in Column I: Therefore be it

RESOLVED, That any person with civil service status at the California Bay-Delta Authority in the class indicated below in Column I on July 13, 2005, holding a position within the Regional Coordination Branch of the Water Management and Regional Coordination Division or who within a period of Board action accepts a position which is classified as performing the duties of service status in such class without further examination.

<u>Column I</u>	<u>Column II</u>
Supervising Biologist	Program Manager I, California Bay-Delta Authority

3. That the following resolution be adopted:

WHEREAS the State Personnel Board on July 13, 2005 established the class indicated below in Column II; and the duties and responsibilities of this class were substantially included in the existing class indicated below in Column I; and

WHEREAS the knowledge and abilities required for the class indicated in Column II were substantially tested for in the examinations for the

RESOLVED, That any person with civil service status at the California Bay-Delta Authority in the class indicated below in Column I on July 13, 2005, holding a position within the Ecosystem Restoration Branch of the Ecosystem Board action accepts a position which is classified as performing the duties of service status in such class without further examination.

Column I

Column II

Environmental Program Manager I
(Supervisor)

Program Manager II, California
Bay-Delta Authority

4. That the following resolution be adopted:

WHEREAS the State Personnel Board on July 13, 2005 established the class indicated below in Column II; and the duties and responsibilities of this class were substantially included in the existing class indicated below in Column I; and

WHEREAS the knowledge and abilities required for the class indicated in Column II were substantially tested for in the examinations for the

RESOLVED, That any person with civil service status at the California Bay-Delta Authority in the class indicated below in Column I on July 13, 2005, holding a position either within the Science and Policy Office and/or the Science Division who within a period of one year from the date of the Board action accepts a position which is classified as performing the duties of the class indicated in Column II shall be deemed to have the same civil service status in such class without further examination.

Column I

Column II

Environmental Program Manager II

Program Manager III, California
Bay-Delta A Authority

B. CLASSIFICATION CONSIDERATIONS

BACKGROUND:

1. Provide some historical perspective about the organizational setting of the subject classes and the needs that this request addresses.

Effective January 1, 2003, the California Bay Delta Authority became a State governmental entity under SB 1653 (Costa). Prior to this date, a broad consortium of State, Federal, local and private entities worked together on individual projects related to ecosystem health and water supply reliability problems in the California Bay-Delta region. This multi-disciplinary group formulated the controlling document entitled the Record of Decision (ROD) which presents the 30-year restoration and reclamation plan for the Bay-Delta region and its attendant watershed areas.

The California Bay Delta Authority is composed of representatives from six State agencies, six Federal agencies, seven public members, one member of the Bay-Delta Public Advisory Committee, and four nonvoting ex officio member of the Legislature. The Authority is mandated by SB 1653 with the responsibility for oversight of certain programs within eleven State and thirteen Federal agencies which are responsible for improving ecosystem quality, water supply reliability, water quality, and the integrity of the levees and channels in the California Bay-Delta region. SB1653 also directs CBDA to manage the Science Program. The programs, projects, commitments and other activities that address the goals and objectives of the CBDA and participating governmental agencies are cited in the Record of Decision (ROD), dated August 28, 2000. The ROD is a 30-year restoration plan which coordinates existing programs and directs the development and implementation of new programs to improve the quality and reliability of the State's water supplies, as well as restore the ecological health of the Bay-Delta watershed.

There are eleven program elements over which the CBDA has oversight responsibility. In addition to oversight responsibility, the CBDA also has implementation authority for the Science element. The elements are:

1. Levee System Integrity
2. Water Quality
3. Water Supply Reliability
4. Ecosystem Restoration
5. Water Use Efficiency
6. Water Transfer
7. Watershed
8. Storage
9. Conveyance
10. Environmental Water Account
11. Science

California State governmental agencies with program elements over whom CBDA has oversight and coordination responsibility include the California Resources Agency, Department of Water Resources, Department of Fish and Game, The Reclamation Board, Delta Protection Commission, Department of Conservation, San Francisco Bay Conservation and Development Commission, California Environmental Protection Agency, State Water Resources Control Board, Department of Health Services, and Department of Food and Agriculture. Federal governmental agencies include United States Department of the Interior, Bureau of Reclamation, Fish and Wildlife Service, Geological Survey, Bureau of Land Management, Environmental Protection Agency, Army Corps of Engineers, Department of Agriculture, Natural Resources Conservation Service, Forest Service, Department of Commerce, National Marine Fisheries Service, and Western Area Power Administration.

The programmatic function of the CBDA is unique within State civil service in that CBDA incumbents have managerial review and oversight over program functions which fall under the legal and programmatic auspices of other State and Federal entities. They have authority to make recommendations relative to the implementation of the ROD, conduct fiscal review of other governmental entities' budgets, request reports from participating governmental agencies, recommend disbursement of funds to carry out the CBDA's goals and objectives, and adopt regulations needed for implementation of program plans and projects carried out by other governmental entities.

Currently, a mix of State, Federal and contract employees are establishing and implementing the oversight mechanisms necessary to implement and assess the program elements outlined in the ROD. These employees will form the basis of the civil service workforce which will continue to function as the policy development and policy decision-makers working to bring consensus and cohesion to the program plans for the twenty-four participating governmental entities cited in the enabling legislation.

This proposal is to establish a State civil service classification plan for the CBDA which will allow for its employees to provide managerial, technical and scientific support to the participating entities; ensure that both State and Federal legislative interests are served; that impacted citizens, such as stakeholders, the public and tribal members, are well versed and included in key decision-making aspects of program implementation; and that the tenets of the ROD are accomplished appropriately and timely.

CLASSIFICATION CONSIDERATIONS:

2. What classifications do the subject classes report to?

Incumbents in the Program Manager III, CBDA class will report to the Director and Chief Deputy Director of the CBDA. Incumbents in the Program Manager II, CBDA class will report to Program Managers III, CBDA or the Director and Chief Deputy Director of the CBDA. Incumbents in the Program Manager I, CBDA class will report to Program Managers II or III, CBDA.

3. Will the subject classes supervise? If so, what classes?

Incumbents in the Program Manager II and III, CBDA classes may have supervisory authority over lower level incumbents within the series, other State or Federal civil service employees, or outside contract employees.

4. What are the specific duties of the subject classes?

Tasks related to the implementation of the ROD are presently performed by State civil service incumbents, exempt appointees, Federal and local government employees. Incumbents perform a broad range of staff and management oversight work which includes providing direction to achieve balanced implementation plans; seeking and promoting partnerships with local interests to integrate various water management options; coordinating activities of the twenty-four implementing agencies; preparing program implementation reports; ensuring prompt and balanced media interactions and utilizations; providing specialized support to the Authority and the public advisory committee and subcommittees; reviewing pertinent reports; and reviewing proposed regulations

At the Program Manager I and II, CBDA levels, incumbents are responsible for a program element or portion of a program element within their area of expertise. Incumbents negotiate and coordinate projects which are being jointly implemented by State, Federal and public and private entities; provide technical comment and recommendation on projects; represent the CBDA before a wide array of interest groups; resolve issues of misunderstanding or interpretation of the ROD; review program plans and budgets to ensure compatibility with the ROD; ensure that activities are linked and appropriately integrated into overall program plans; ensure that decisions made are scientifically and technically founded; foster political consensus amongst all participating and interested groups; provide media and community outreach mechanisms; serve as advisors to the CBDA and public advisory committee and subcommittees; and perform other related tasks as assigned. Program Manager II, CBDA incumbents may also provide supervision to a mix of civil service incumbents, Federal and local government employees.

At the Program Manager III, CBDA level, incumbents function as subject matter experts and in-house program managers by developing policies and procedures relative to their specific program element; representing the CBDA at the highest State and Federal levels; recommending legislative change, as necessary to implement their project-related portion of the ROD; and ensuring that issues related to the interpretation and implementation of the ROD are addressed equitably and solved amicably. Incumbents may also provide supervision to a mix of civil service, Federal and contract employees.

5. What is the decision-making responsibility of the subject classes?

Incumbents at all levels have the authority to interpret the ROD and educate those involved in their area of specialty regarding the contents and intent of the ROD. Program Manager I and II incumbents may become involved in decisions regarding financial, policy, technical, and/or scientific program elements within their area of expertise. Some Program Manager II positions have administrative responsibilities related to their specific program element. In addition to the technical/scientific determinations made, Program Managers III, CBDA also bear responsibility for the administrative aspects of their specific programs and must develop strategic, budgetary, staffing and other plans to ensure program success.

6. What would be the consequence of error if incumbents in the subject classes did not perform their jobs? (Program problems, lost funding, public safety compromised, etc.)

Errors in interpretation of the ROD, lack of timely implementation, inability to bring consensus among participants, failure to provide sound fiscal systems, or other program failures could mean the loss of water supply, deterioration of Bay-Delta water quality and ecosystem habitat and loss of adequate flood protection or other critical environmental or social protections for two-thirds of the population of California. Failures could negatively impact over 738,000 acres of watershed lands, over 750 plants and animal species, and 7,000,000 acres of productive agricultural land, as well as 80% of the State's commercial salmon fisheries.

The magnitude of such failures is incalculable in terms of dollar, human and political costs. No other positions within State service bear such broad based, long-term responsibilities over such a large number of governmental entities as those within the CBDA.

7. What are the analytical requirements expected of incumbents in the subject classes?

Incumbents at all levels within the proposed class series must possess high levels of technical and scientific understanding regarding the large number of disciplines associated with program projects. Although individuals require specialization within their work assignment, a well developed understanding of all aspects and impacts of related CBDA programs is necessary for success in all positions. Incumbents must know and understand the intent of the ROD and the legal mechanisms in place to implement the requirements of the ROD; the State and Federal budgetary processes; the workings of local governmental bodies; the workings of agribusiness in the State; financial, ecological and environmental impacts upon various outdoor recreations; legislative and report preparation and review; scientific principles and their application to specific program projects; and a myriad of other legal and business concepts which are impacted by the implementation of various projects.

8. What are the purpose, type and level of contacts incumbents in the subject classes make?

At all levels, incumbents in the proposed new classes must deal with a variety of State, Federal and local government entities, as well as private- and public- interest groups and others, such as tribal representatives, in the course of the conduct of their work. State Legislative members and staff; Federal elected officials and their staff; agri-business representatives, various outdoor recreational associations, local governments, and private citizens whose properties may be within the boundaries of project developments are all part of the ongoing contacts necessary to satisfactorily complete the work assignments. Much of the work performed by incumbents in the proposed classes is educational and mentoring in nature. Seeking consensus, negotiating agreements with those having disparate points of view, and ensuring continuing movement forward toward specified goals is the primary mission of all assigned work. Ensuring that those who may be impacted by specific projects have a voice and know how to make their issues known is another critical factor related to the types and levels of contacts for incumbents in the proposed new classes.

NEED FOR NEW CLASS

9. What existing classes were considered and why were they not appropriate?

All twenty-four active classes within Bargaining Unit 10 that are designated “managerial” were reviewed for class concept, minimum qualifications, knowledge and abilities and salary structure. At the time of review, only sixteen classes had incumbents allocated as was indicated on the Department of Personnel Administration Filled Position Data Base. Of the sixteen active classes, thirteen were one-position classes and, of the three remaining classes, only the Environmental Program Manager classes had a general servicewide concept. The remaining class was not a generic scientific manager class, but rather aligned itself with Pest Management and Prevention.

One-person classes and the Pest Management class were excluded from further consideration, as they are too limited in scope and available only for allocation within specific departments. The Environmental Program Manager classes were reviewed and duty statements were requested from two of the using departments. These duty statements were later compared to the duty statements and Position Description Questionnaires completed by individuals at CBDA.

Classes within the Environmental Program Manager series were reviewed for comparability to the proposed classes. Although knowledge, skill and abilities and Minimum Qualifications are similar to those required for completion of tasks at CBDA, the class concepts differ. The level of authority, breadth of oversight, impact of assigned projects, and coordination of multi-disciplinary and multi-governmental projects is broader and more far-reaching in the CBDA positions than singular positions assigned to the comparable levels within the Environmental Program Manager class series.

MINIMUM QUALIFICATIONS

10. What are the proposed or current minimum qualifications of the subject classes, and why are they appropriate?

All of the proposed new classes require possession of a Bachelor’s Degree with major work in biology, chemistry, engineering, physical science, environmental science, public administration, planning, or a closely related field for both promotional and open candidates. Outside candidates who possess an advanced degree in one of the cited disciplines, or a closely related field, may substitute the additional education for one year of the general experience.

All levels require that non-State experience include five years of broad and extensive experience in scientific research, public outreach, planning, regulatory development, investigative environmental or similar work which include one or two years which must have been in a lead administrative, managerial, or full charge supervisory assignment equivalent in level of responsibility to that of the next lowest level within the class series.

The Program Manager III, CBDA also requires two years of experience in the California State service performing duties comparable to those of a Program Manager II, CBDA.

The Program Manager II, CBDA also requires two years of experience in the California State service performing duties comparable to those of a Program Manager I, CBDA.

The Program Manager I, CBDA also requires two years of experience in the California State service performing duties comparable to those of a Staff or Senior Environmental Scientist.

The Minimum Qualifications are appropriate for the proposed classes in that they are job related, develop a clear promotional pattern, give recognition to comparable work performed within companion State departments, require an adequate period of related experience for non-State applicants, allow for a broad array of educational backgrounds, and provide for a reasonable candidate pool from which to fill vacant positions. Additionally, Pattern I experience is stated as accepting work performed which is comparable to that of the CBDA classes as there are current CBDA employees allocated to other civil service classifications who are presently performing the duties of the proposed classes.

PROBATIONARY PERIOD:

11. If a probationary period other than six months is proposed, what is the rationale?

It is recommended that all three classes within the proposed series possess 12-month probationary periods. In order to adequately assess the performance of individuals in the proposed classes, a 12-month probationary period is necessary as work products, budget cycles, and project timetables extend far beyond six months.

STATUS CONSIDERATIONS:

12. What is the impact on current incumbents?

Current incumbents, dependent upon their individual status, will either be moved by Board action, participate in open examinations or retain their non-civil service temporary status. Fifty percent of the targeted positions have incumbents from Federal and local government agencies. These staff are either on loan to CBDA or under term agreements that will expire in a couple of years. Without a mechanism to allow them to compete for these positions, CBDA will suffer the loss of their unique expertise and the ensuing adverse program impacts. Existing State employees will maintain all status rights accrued to them in their current positions

13. Will current employees move by examination, transfer, reallocation, split-off, etc? Explain rationale.

Current State civil service employees will move to the proposed new classes by split-off. Federal employees and some contract employees will be required to participate in open examinations, while some contract employees may retain their contractor's status.

CONSULTED WITH:

Dave Caffrey, Cooperative Personnel Services
Marie Powell, Cooperative Personnel Services

CALIFORNIA STATE PERSONNEL BOARD

SPECIFICATION

PROGRAM MANAGER, CALIFORNIA BAY DELTA AUTHORITY
 Series Specification
 (Established _____)

SCOPE

This series specification describes three Program Manager classes used to perform a broad range of staff and management oversight work within the California Bay Delta Authority (CBDA). Oversight responsibility is directed by the Record of Decision, a 30-year plan developed and accepted by State, Federal, public, and private interest groups to restore the San Francisco Bay/Sacramento-San Joaquin Delta Estuary. Incumbents coordinate the activities of the twenty-four implementing agencies to promote balanced program implementation plans and activities that meet the goals and objectives of the CALFED Program and adhere to the Record of Decision. On behalf of the CBDA, incumbents provide direction to achieve balanced implementation, as well as integration of, and continuous improvement in, all program elements; track the progress of all program projects and activities, and assess overall achievement of the goals and objectives of the Program; seek and promote partnerships with local interests and programs that seek to integrate various water management and environmental options; modify, as necessary, and coordinate the modification of timelines and activities deemed necessary by the CBDA; develop policies and make decisions regarding program milestones; provide a forum for the resolution of conflicts or disputes among implementing agencies; provide specialist support to the Authority and the public advisory committee and subcommittees; review or prepare regulations for adoption; request and review reports; ensure prompt and balanced media utilization; and communicate with the Congress of the United States and the California State Legislature and others; and perform other related duties.

<u>Schem</u> <u>Code</u>	<u>Class</u> <u>Code</u>	<u>Class</u>
BH79	0783	Program Manager I, California Bay Delta Authority
BH78	0784	Program Manager II, California Bay Delta Authority
BH77	0785	Program Manager III, California Bay Delta Authority

ENTRY LEVEL

Entry to the series may be at any classification level.

FACTORS AFFECTING POSITION ALLOCATION

Distinctions between levels are based upon both a quantitative and qualitative assessment of the criteria cited below. Emphasis on a particular factor or factors may change with specific assignments, but no single factor is controlling.

Quantitative Criteria:

1. Dollar value of project(s) assigned.
2. Combination of State, Federal, local, and private constituents (who, how many, what levels).
3. Degree of public and legislative interest, both State and Federal.
4. Financial, restorative, or other consequence of failure or other inability to reach consensus or meet major milestones.
5. Number and type of unique technical or scientific issues in assigned projects.
6. Number and types of committee, teams, and work groups to which assigned.

Qualitative Criteria:

Knowledge: Assesses the nature and extent of the body of information/facts which are essential to successfully complete the assigned work.

Supervision Received: Assesses the nature and extent of direct and indirect controls over the assigned work exercised by the incumbent, as well as the independence of action exercised, and the thoroughness with which work is reviewed.

Guidelines: Assesses the nature of relevant instructions/scientific information available and the judgment needed to interpret and apply such information.

Scope and Effect: Assesses the purpose, breadth, and depth of work assigned, and the effect of successful completion of assignments, both within and outside of the CBDA.

Complexity: Assesses the nature, variety, and intricacy of assignments, and the difficulty and originality involved in successful completion of work assignments.

DEFINITION OF LEVELS

PROGRAM MANAGER I, CALIFORNIA BAY DELTA AUTHORITY

This is the first managerial level of the series which has significant responsibility for formulating policies or programs. Incumbents are assigned oversight and management of projects of moderate scope and

complexity; act as technical consultants and overseers on projects or specific phases of projects; may serve as team members within their program area; work with a broad array of State, Federal, and public/private interest groups to ensure understanding and consensus on various long- and short-term projects; exercise discretion in the provision of oversight and coordination of projects as defined in the Record of Decision; and may serve as advisors to executive staff, the Authority, or public advisory committee and/or subcommittees.

PROGRAM MANAGER II, CALIFORNIA BAY DELTA AUTHORITY

Under general direction, incumbents provide oversight and policy direction within their area of expertise to a wide variety of State, Federal, and public/private interest groups involved in the implementation of the CBDA, Record of Decision. Assignments are larger in size, broader in scope, and carry greater political sensitivity than those assigned to lower-level classes. Incumbents function as technical or regional specialists, and review program plans and budgets to ensure compatibility with the Record of Decision; coordinate Bay-Delta improvements to ensure that activities are linked and are appropriately integrated; ensure that decisions regarding program activities are scientifically founded; exercise discretion in the provision of oversight and coordination on a broad and technically diverse range of projects; find ways to foster political consensus to ensure consistent policy interpretation and application; and provide media and community outreach mechanisms to ensure governmental and public understanding of program activities and intent. Some positions may serve as special advisors to the Executive Staff or the Authority.

Positions may exercise managerial and supervisory authority over a multidisciplinary group of State, Federal, and contract employees within the CBDA.

PROGRAM MANAGER III, CALIFORNIA BAY DELTA AUTHORITY

Under administrative direction, as a Deputy Director or Program Advisor, incumbents are responsible for program development and implementation of a specific technical or administrative program area within the CBDA.

In the technical areas, incumbents are recognized experts in their field of specialization, and are responsible for program design and appropriate staffing and attendant fiscal solvency of their technical program. Incumbents are responsible for the negotiation and coordination of oversight roles for projects which are being implemented jointly by a broad array of State, Federal, and other public and private entities; provide oversight of the implementation of various parts of the CBDA, Record of Decision, and provide technical comments and recommendations within their area of expertise; represent the CBDA before a broad variety of State, Federal, local,

and public and private interest groups; resolve issues of disparate understanding and interpretation of the Record of Decision; and work closely with others within the CBDA to take advantage of complementary opportunities among programs to reduce conflicts among the goals and implementation actions of all CBDA programs and participants.

In the Administrative areas, incumbents may provide program and policy development related to media and public outreach, financial advocacy, and oversight of all funding sources and budgetary allocations for all participating parties; or may provide technical program expertise and advice as a special advisor to the Executive Staff and the CBDA, as well as function as special liaison between the State Resources Agency and other governmental entities.

Incumbents may have broad supervisory and managerial authority over a multidisciplinary group of State, Federal, and contract employees within the CBDA.

MINIMUM QUALIFICATIONS

ALL LEVELS:

Education: Possession of a Bachelor's Degree with major work in biology, chemistry, engineering, physical science, environmental science, public administration, planning, or a closely related field.

PROGRAM MANAGER I, CALIFORNIA BAY DELTA AUTHORITY

Either I

Experience: Two years of experience in the California state service performing duties comparable to those of a Staff or Senior Environmental Scientist.

Or II

Experience: Five years of broad and extensive experience in engineering, scientific research, public outreach, planning, regulatory development, investigative environmental, or similar work, including at least one year which must have been in a position responsible for the implementation of environmental policies, programs, plans, or research projects; or the conduct of an environmental monitoring and surveillance or environmental management program; or provided lead responsibility for the work of a multidisciplinary staff performing investigatory or regulatory work at a level equivalent to that of a Staff Environmental Scientist. and

Education: Possession of a Bachelor's Degree with a major in engineering, biological, chemical, physical, or environmental science, public administration, planning, or a closely related field. Possession of an advanced degree in one of the disciplines cited, or a closely related field, may be substituted for one year of the general work experience.

PROGRAM MANAGER II, CALIFORNIA BAY DELTA AUTHORITY

Either I

Experience: Two years of experience in the California state service performing duties comparable to those of a Program Manager I, California Bay Delta Authority

Or II

Experience: Five years of broad, extensive, and increasingly responsible experience in engineering, scientific research, public outreach, planning, regulatory development, investigative environmental or similar work, including at least one year which must have been in an administrative or supervisory position in charge of a staff responsible for the development or implementation of environmental policies, programs, plans, or research projects; or the conduct of a major environmental monitoring and surveillance, or environmental management program; or provide for the supervision of the work of a large multidisciplinary environmental investigatory or regulatory staff at a level of responsibility equivalent to that of a Program Manager I, California Bay Delta Authority. and

Education: Possession of a Bachelor's Degree with a major in engineering, biological, chemical, physical, or environmental science, public administration, planning, or a closely related field. Possession of an advanced degree in one of the disciplines cited, or a closely related field, may be substituted for one year of the general work experience.

PROGRAM MANAGER III, CALIFORNIA BAY DELTA AUTHORITY

Either I

Experience: Two years of experience in the California state service performing duties comparable to those of a Program Manager II, California Bay Delta Authority.

Or II

Experience: Five years of broad, extensive, and increasingly responsible experience in engineering, scientific research, public outreach, planning, regulatory development, investigative environmental, or similar work, including at least two years which must have been in a managerial position in full charge of a staff responsible for the development or implementation of environmental policies, programs, plans, or research projects; or the conduct of a major environmental monitoring and surveillance or environmental management program; or provide for management of the work of a large multidisciplinary environmental investigatory or regulatory staff at a level of responsibility equivalent to that of a Program Manager II, California Bay Delta Authority. and

Education: Possession of a Bachelor's Degree with a major in engineering, biological, chemical, physical, or environmental science, public administration, planning, or a closely related field. Possession of an advanced degree in one of the disciplines cited, or a closely related field, may be substituted for one year of the general work experience.

KNOWLEDGE AND ABILITIES

ALL LEVELS:

Knowledge of: California environmental water issues and policies; principles of land, water, fish, wildlife, and other natural resources; principles of ecology; land use practices; effects of waste materials and their interactions with the environment; State and Federal environmental rules, regulations, and requirements; State, Federal, and local legislative processes; environmental programs and policies of participating governmental entities; principles and techniques of personnel management and supervision; and budgeting and other administrative functions.

Ability to: Coordinate and integrate program activities; manage, lead, or administer program resources; provide direction to achieve balanced implementation, as well as integration of, and continuous improvement in, all program elements; track the progress of all program projects and activities, and assess overall achievement of the goals and objectives of the program; seek and promote partnerships with local interests and programs that seek to integrate various water management options; modify, develop policies, and make decisions regarding program milestones; provide a forum for the resolution of conflicts or disputes among implementing agencies; ensure prompt and balanced media utilization; communicate with the Congress of the United States and the California State Legislature and others; analyze and evaluate information and reach sound conclusions; review and interpret scientific and environmental reports; analyze situations and take appropriate actions; communicate effectively with all those contacted in the course of the work; prepare clear, complete, and technically accurate reports; apply rules, regulations, policies, and requirements of State and Federal environmental protection and resource management programs; and develop innovative solutions to difficult environmental management and water problems.

PROGRAM MANAGER II, CALIFORNIA BAY DELTA AUTHORITY
PROGRAM MANAGER III, CALIFORNIA BAY DELTA AUTHORITY

Knowledge of: In addition to the above, principles and practices of supervision and management, including a manager's/supervisor's responsibility for promoting equal opportunity in hiring and employee development and promotion, and for maintaining a work environment that is free of discrimination and harassment.

Ability to: In addition to the above, plan and direct the work of subordinate staff, while effectively promoting equal opportunity in employment and maintaining a work environment that is free of discrimination and harassment.

CLASS HISTORY

<u>Class</u>	<u>Date Established</u>	<u>Date Revised</u>	<u>Title Changed</u>
Program Manager I, California Bay Delta Authority		--	--
Program Manager II, California Bay Delta Authority		--	--
Program Manager III, California Bay Delta Authority		--	--

ccd/sks

(Cal; 07/13/05)

TO: STATE PERSONNEL BOARD

FROM: DAPHNE BALDWIN, Manager
Policy Division

REVIEWED BY: LAURA AGUILERA, Assistant Executive Officer
Executive Office

CAROL ONG, Manager
Policy Development

SUBJECT: PROPOSAL TO DESIGNATE THE CLINICAL SOCIAL WORKER (HEALTH FACILITY) AND THE CLINICAL SOCIAL WORKER (HEALTH/CORRECTIONAL FACILITY) (SAFETY) CLASSIFICATIONS AS "SENSITIVE" FOR THE PURPOSE OF PRE-EMPLOYMENT DRUG TESTING AND REVISE THE MINIMUM QUALIFICATIONS TO INCLUDE A PRE-EMPLOYMENT DRUG TESTING REQUIREMENT

REASON FOR HEARING:

The California Department of Corrections (CDC), Department of Developmental Services (DDS), Department of Mental Health (DMH), and the Department of Veterans Affairs (DVA)¹ request that the Clinical Social Worker (Health Facility) and the Clinical Social Worker (Health/Correctional Facility) (Safety)² classifications be designated as "sensitive" for the purpose of pre-employment drug testing and that the minimum qualifications for both classes be amended to reflect this change. Under Title 2, California Code of Regulations (2CCR) § 213, a Board hearing is required to determine whether drug testing requirements are met. This hearing is to allow the Board to hear from the Departments and other interested members of the public before reaching a final decision.

¹ CDC, DDS, DMH, and DVA are collectively referred to herein as the "Departments."

² Clinical Social Worker (Health Facility) and the Clinical Social Worker (Health/Correctional Facility) (Safety) are referred to herein as "Clinical Social Worker."

BACKGROUND:

On June 21, 2005, the Clinical Social Worker classes were approved by the Board. The action consolidated and retitled five classifications into two classifications as follows:

Five Previous Classes

Psychiatric Social Worker
 Psychiatric Social Worker (DMH) (DDS)
 Psychiatric Social Worker (Health Facility)

Psychiatric Social Worker (Health Facility)
 (Safety)
 Psychiatric Social Worker (Correctional
 Facility)

Two New Classes

Clinical Social Worker (Health
 Facility)

Clinical Social Worker
 (Health/Correctional Facility)
 (Safety)

Three of the five previous classifications [*highlighted above*] classifications were already designated as “sensitive” and included a pre-employment drug testing requirement.

The Departments request that the Board designate the new Clinical Social Worker classes listed above as “sensitive” and approve a change in the minimum qualifications to include a pre-employment drug testing requirement (Attachment 1). This will allow the Departments to conduct pre-employment drug testing of those candidates that are coming from outside--*who are not currently in a class requiring drug testing*--prior to being appointed to the new Clinical Social Worker classes.

CONSULTED WITH:

Linda Sakauye, California Department of Corrections
 Beth Meneely, Department of Developmental Services
 Susan Lorenz, Department of Mental Health
 Hazel Phillips, Department of Veterans Affairs
 Daphne Baldwin, State Personnel Board
 Jennifer Roche, State Personnel Board

In accordance with the terms of the Bargaining Unit 19, American Federation of State, County and Municipal Employees (AFSCME) contract, the Department of Personnel Administration (DPA) has notified the union in writing of the Clinical Social Worker proposal.

NEED FOR PROPOSED REVISIONS:

SPB may amend minimum qualifications and revise classifications pursuant to Government Code (GC) § 18802. Additionally, 2CCR § 213 specifies the conditions under which pre-employment drug testing may be required. The regulation requires the employer to document the sensitivity of the classes and the consequences of drug-related behavior according to the following criteria:

- (1) The duties involve a greater than normal level of trust for, responsibility for or impact on the health and safety of others, and
- (2) errors in judgment, inattentiveness, or diminished coordination, dexterity or composure while performing the duties could clearly result in mistakes that would endanger the health and safety of others; and
- (3) employees in these positions work with such independence that it cannot be safely assumed that mistakes such as those described in (2) could be prevented by a supervisor or another employee.

The supporting information listed below from the Departments addresses the requirements listed in 2CCR § 213.

- (1) Clinical Social Workers have a greater than normal level of trust as they have independent decision-making authority, in a health or correctional facility, regarding the assessment and evaluation of potentially dangerous mentally ill inmates, and individuals with mental, physical, or developmental disabilities. The information collected is used in the diagnosis, treatment and release of individuals. They must maintain a safe working environment, in a 24-hour operation, by assisting staff in inspecting facilities, observing behavior to intervene—*avoiding injuries or escape*. They develop, monitor, and modify treatment plans always maintaining awareness of the individual's behavior. They provide suicide and crisis risk assessment and intervention. They react appropriately--*ensuring the safety and security of others when disruptive and assaultive behavior begins*--and are responsible for individual and group therapy sessions; coordinate discharge and release of individuals into communities; provide transportation (driving a vehicle) to individuals for court hearings, pre-placement visits, or release into communities. They interact with family members, courts, and community agencies. The ability to analyze situations and take quick effective action, maintaining control of patients, individuals, or inmates, to protect self and other individuals, is required.
- (2) The consequences of error resulting from a Clinical Social Worker being under the influence could endanger the health and safety of themselves, patients, individuals, inmates, fellow employees, the facility and the public.

This is especially true for Clinical Social Workers as they are responsible for accurate assessments, proper treatment and supervision of potentially dangerous mentally ill inmates and individuals in facilities. Errors in judgment and inattentiveness could result in an inmate or patient overtaking the Clinical Social Worker, using nearby items as weapons, obtaining keys, a vehicle, causing an auto accident, injuring others, or escaping, which then becomes a public safety issue.

It is necessary to screen at the pre-employment level to identify persons who are impaired by drugs to protect fellow employees, patients, inmates and the general public from injury or death that their inattentiveness may cause; and to maintain a safe, healthful work environment free of illegal drug use.

- (3) Clinical Social Worker personnel are assigned throughout the Departments in either a health facility or in a correctional facility. Most of the time, the Clinical Social Worker works alone with the inmate or patient and makes independent decisions on the diagnosis and treatment of the person. They routinely work separate shifts as all facilities are a 24-hour operation, thus ensuring that they are able to assess situations and provide services for multiple shifts.

Employees working as a Clinical Social Worker must be able to make independent decisions in times of emergency and crisis intervention--*as well as during routine tasks*--and act without the guidance of a supervisor and/or another employee. The ability to analyze situations accurately and take effective action is required for this job. A Clinical Social Worker impaired by drug usage would not be able to make appropriate decisions regarding the assessment of a person's emotional status, thereby creating situations with serious and/or life threatening consequences for both facility personnel as well as the public.

APPLICABLE LAW:

Government Code (GC) § 18802 provides in part:

From time to time as it deems necessary, the board may establish additional classes and divide, combine, alter, or abolish existing classes. In establishing, altering, or abolishing classes, the board shall consider the recommendations of the Department of Personnel Administration...

2CCR § 213 provides:

An appointing power may conduct drug testing of applicants for a class only when:

- (1) The duties involve a greater than normal level of trust for, responsibility for or impact on the health and safety of others, and

(2) errors in judgment, inattentiveness, or diminished coordination, dexterity or composure while performing the duties could clearly result in mistakes that would endanger the health and safety of others; and

(3) employees in these positions work with such independence that it cannot be safely assumed that mistakes such as those described in (2) could be prevented by a supervisor or another employee.

(b) The board concludes after a public hearing that the appointing power has adequately documented the sensitivity of the class and the consequences of drug-related behavior and that drug testing is, therefore, job related for the class; and

(c) As a result of (a) and (b) above, the board approves the inclusion of a requirement of drug testing in the minimum qualifications for the class.

ISSUES:

The following issues are before the Board for review:

Should the Board exercise its authority pursuant to G.C. § 18802 and 2CCR § 213 to:

1. Designate the Clinical Social Worker (Health Facility) and the Clinical Social Worker (Health/Correctional Facility) (Safety) classifications as “sensitive” for the purpose of pre-employment drug testing.
2. Revise the minimum qualifications for the Clinical Social Worker (Health Facility) and the Clinical Social Worker (Health/Correctional Facility) (Safety) classifications for the purpose of pre-employment drug testing.

STAFF’S RECOMMENDATION:

1. That the Clinical Social Worker (Health Facility) and the Clinical Social Worker (Health/Correctional Facility) (Safety) classifications be designated “sensitive” pursuant to Title 2, California Code of Regulations (2CCR) § 213 for the purpose of pre-employment drug testing.
2. That the proposed revised specification for the Clinical Social Worker (Health Facility) and the Clinical Social Worker (Health/Correctional Facility) (Safety) classifications pursuant to Government Code § 18802 as shown in this calendar be adopted.

CALIFORNIA STATE PERSONNEL BOARD

SPECIFICATION

CLINICAL SOCIAL WORKER (HEALTH FACILITY)
 Series Specification
 (Established _____)

SCOPE

Under general direction, in a health or correctional facility, to do clinical social work with individuals with mental, physical, or developmental disabilities, and their communities; and to do other related work.

<u>Schem</u> <u>Code</u>	<u>Class</u> <u>Code</u>	<u>Class Title</u>
XP31	9868	Clinical Social Worker (Health Facility)
XP35	9872	Clinical Social Worker (Health/Correctional Facility) - Safety

DISTINGUISHING CHARACTERISTICS

Positions are responsible for maintaining safety by assisting staff in inspecting facilities, or observing behavior to identify or intervene in security breaches that could lead to injuries or escape, are appropriately allocated to the class of Clinical Social Worker (Health/Correctional Facility) - Safety. The class of Clinical Social Worker (Health Facility) is used for positions performing clinical social work in a nonforensic setting.

DEFINITION OF SERIES

Incumbents conduct assessments and summarize case information for use in diagnosis, treatment (level of care), and dispositional release; diagnose and/or collaborate in the formulation of a diagnosis; develop, monitor, and modify treatment plans in collaboration with the interdisciplinary treatment team; identify and recommend appropriate services

based on assessment and, where applicable, civil or penal code commitment; provide individual and group therapy as delineated in the treatment plan; provide suicide and crisis risk assessment and intervention; participate in risk assessment, evaluation, and recommendation for alternate level of care placement, for release to the community, or other case disposition (with consideration for the risk the patient presents to the community); coordinate discharge planning activities and act as resource on accessing appropriate community support and services to be utilized upon release; respond to requests from clients/patients, family members, courts, and community agencies; provide social work services to family members (Departments of Mental Health, Developmental Services, and Veterans Affairs only) and community agencies; consult with colleagues and other staff on behavior management treatment issues; prepare verbal and written social work reports and provide court testimony, as required by law and policy, which can be used in all legal jurisdictions; participate in professional meetings, committees, training, and conferences; and participate in research and Quality Assurance and Improvement (QA&I).

MINIMUM QUALIFICATIONS

BOTH CLASSES:

Possession of a valid license as a Licensed Clinical Social Worker issued by the California Board of Behavioral Science. [Individuals who do not qualify for licensure by the California Board of Behavioral Science may be admitted into the examination and may be appointed but must secure a valid license within four years of appointment; however, an individual can be employed only to the extent necessary to be eligible for licensure plus one year. An extension of the waiver may be granted for one additional year based on extenuating circumstances, as provided by Section 1277(e) of the Health and Safety Code. The time duration for unlicensed employment does not apply to active doctoral candidates in social work, social welfare, or social service, until the completion of such training.]

[Unlicensed individuals who are recruited from outside the State of California and who qualify for licensure may take the examination and may be appointed for a maximum of one year at which time licensure shall have been obtained or the employment shall be terminated; an extension of the waiver may be granted for an additional one year based on extenuating circumstances, as provided by Section 1277(e) of the Health

and Safety Code. Individuals granted an additional one year based on extenuating circumstances may be appointed for a maximum of two years at which time licensure shall have been obtained or the employment shall be terminated. Additionally, they must take the licensure examination at the earliest possible date after the date of employment.]

and

Education: Completion of a master's degree program from an accredited school of social work, approved by the Council on Social Work Education.

KNOWLEDGE AND ABILITIES

BOTH CLASSES:

Knowledge of: Principles, procedures, techniques, trends, and literature of social work with particular reference to clinical social work; psycho/social aspects of mental and developmental and physical disabilities; community organization principles; scope and activities of public and private health and welfare agencies; characteristics of mental, developmental, and physical disabilities; current trends in mental health, public health and public welfare, and Federal and State programs in these fields.

Ability to: Utilize and effectively apply the required technical knowledge; establish and maintain the confidence and cooperation of persons contacted in the work; secure accurate psycho/social data and record such data systematically; prepare clear, accurate, and concise reports; work family and community agencies in preparation for discharge; develop and implement programs; provide professional consultation; analyze situations accurately and take effective action; communicate effectively.

SPECIAL PERSONAL CHARACTERISTICS

BOTH CLASSES:

An objective and empathic understanding of individuals with the mental, developmental, or physical disabilities; flexibility to alter hours as needed; tolerance; tact; emotional stability; and respect for persons from diverse backgrounds.

SPECIAL PHYSICAL CHARACTERISTICS

CLINICAL SOCIAL WORKER (HEALTH/CORRECTIONAL FACILITY) - SAFETY

Persons appointed to the class of Clinical Social Worker (Health/Correctional Facility) - Safety are reasonably expected to have and maintain sufficient strength, agility, and endurance to perform during physically, mentally, and emotionally stressful situations encountered on the job without compromising their health and well-being or that of their fellow employees, patients, or inmates.

Assignments may include sole responsibility for the control of patients, clients, or inmates and the protection of personal and real property.

DRUG TESTING REQUIREMENT

BOTH CLASSES:

Applicants for positions in these classes are required to pass a drug-screening test. Testing of current employees who are applicants in an examination or who are transferring is permitted only if the person does not have a current appointment to a class for which drug testing is a requirement.

CLASS HISTORY

	<u>Date Established</u>	<u>Date Revised</u>	<u>Title Changed</u>
Clinical Social Worker (Health Facility)		--	--
Clinical Social Worker (Health/Correctional Facility) - Safety		--	--

STATE PERSONNEL BOARD

NON-HEARING CALENDAR

RE: BOARD DATE JULY 13, 2005

200

(Cal; 07/13/05)

MEMO TO : STATE PERSONNEL BOARD

FROM : KAREN COFFEE, Chief, Merit Employment and
Technical Resources Division

SUBJECT : Non-Hearing Calendar Items for Board Action

NONE PRESENTED